

ENTERED

June 17, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION****MARK CLIFF SCHWARZER,****Plaintiff,****v.****BOBBY LUMPKIN; TRAVIS WHITE;
and PATRICK O'DANIEL,****Defendants.**§
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§**Civil Action No. 6:18-cv-00029****MARK CLIFF SCHWARZER,****Plaintiff,****v.****DALE WAINRIGHT; ROBERT BEARD;
PAMELA MENDEZ-BANDA; BRYAN
COLLIER; and JENNIFER SMITH,****Defendants.**§
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§**Civil Action No. 6:18-cv-00034****ORDER FOR ADDITIONAL BRIEFING**

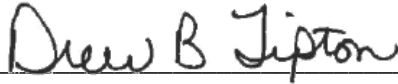
Before the Court is Defendants Bobby Lumpkin and Travis White's Brief in Response to ECF No. 49: Order for Additional Briefing, filed through the Texas Attorney General's Office ("Texas AG") in *Schwarzer v. Lumpkin et al.*, 6:18-cv-29, and the Texas AG's *Amicus Curiae* Advisory Regarding Date of Plaintiff Mark Schwarzer's Appeal, filed in *Schwarzer v. Wainwright et al.*, 6:18-cv-34. (6:18-cv-29, Dkt. No. 52); (6:18-cv-34, Dkt. No. 32). In both actions, the Court ordered briefing to determine whether Schwarzer timely filed certain papers pursuant to the prison mailbox rule. *See* (6:18-cv-29, Dkt. No. 49); (6:18-cv-34, Dkt. No 28).

Complying with the Court's orders, Schwarzer claimed that mail dropped off in the prison mailing system is processed and recorded in the mail log on the next business day. (6:18-cv-29, Dkt. No. 51 at 2); (6:18-cv-34, Dkt. No. 29 at 2). This practice, according to Schwarzer, explains why the papers he allegedly dropped off on October 30, 2019 and December 8, 2020—the deadlines for such papers to be mailed if Schwarzer wanted them timely filed—were recorded on the mail log as “received” by the mailroom on October 31, 2019 and December 9, 2020, respectively. *Id.*

For its part, the Texas AG, as counsel in 6:18-cv-29 and as *amicus curiae* in 6:18-cv-34, similarly complied in both cases but offered contradictory claims and arguments regarding the mailing procedures employed by the prison Schwarzer is incarcerated in. *Compare* (6:18-cv-29, Dkt. 52 at 2 (“Schwarzer signed his objections on December 8, 2020 and claims that he placed his objections in the prison mail system on the same day. However, Schwarzer’s objections were postmarked on December 9, 2020 and the outgoing mail log attached to Schwarzer’s brief shows that his objections were received in the mailroom on December 9, 2020. Thus, Schwarzer’s objections should be found to have been filed on December 9, 2020 and the Court should find his objections untimely filed.”) (citations omitted)) *with* (6:18-cv-34, Dkt. No. 32 at 2 (“According to mail logs attached as Exhibit A, Mr. Schwarzer[] sent mail on October 31, 2019 Mail received after hours is processed the next day and therefore the mail log is consistent with Mr. Schwarzer’s claim he placed his motion in the mail on October 30, 2019[,]” thereby making his papers timely filed) (citations omitted)). Therefore, the Court **ORDERS** the Texas AG to reconcile and clarify its arguments in a brief to be filed in both actions by June 25, 2021.

It is SO ORDERED.

Signed this 17th of June, 2021.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE